79-1058

Supreme Court, U. S.
FILED
FEB 8 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

CHAMPION SPARK PLUG COMPANY,

Petitioner,

v.

THE GYROMAT CORPORATION,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

FRITZ L. SCHWEITZER, JR.
MANDEVILLE AND SCHWEITZER
230 Park Avenue
New York, New York 10017
Attorney for Respondent

Of Counsel:

MICHAEL A. CORNMAN
MANDEVILLE AND SCHWEITZER
230 Park Avenue
New York, New York 10017

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

CHAMPION SPARK PLUG COMPANY,

Petitioner,

v.

THE GYROMAT CORPORATION,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

The Petition Should Be Denied

The petition in this case is inadequate in substance and defective in form and should be denied.

No Question Is Presented Meriting Consideration by This Court

The decision below held valid certain claims of respondent's patent relating to "on-the-fly" control of vertically reciprocating electrostatic spray equipment. The decision of the Court of Appeals, which was consistent with a previous decision of another court holding the same patent claims valid and infringed,[1] is based primarily on factual considerations. The decision is not in conflict with the decision of any other Court of Appeals, nor is it in conflict with any decision of this Court.

---

[1] *Gyromat Corporation* v. *H. G. Fisher & Co.*, 167 USPQ 326 (N.D., Ill., 1970).

The petitioner urges that the decision of the Court of Appeals below has the effect of "greatly limiting the scope of prior art which can be considered under Section 103 of the Patent Act". There is absolutely no support for that proposition, since all of the so-called prior art that was offered by the petitioner was considered by the Court of Appeals. The petition fails to identify a single example of alleged prior art exclusion; indeed, there was none.

The petition suggests that this Court should reinterpret its decision in *Sakraida* v. *Ag Pro, Inc.*, 425 US 273 (1976). However, this Court has consistently refused to grant Certiorari for that purpose.[2] Moreover, the instant case presents no issue that would be resolved by a further interpretation of the *Sakraida* case. The Second Circuit Court of Appeals specifically pointed out that it had no disagreement with the *Sakraida* holding. (Appendix to Petition, p. 36a).

The Petition Is Defective

Although the petition should be denied on its lack of merit, for the reasons set forth above, it is also defective in form, and should be denied out of hand for that reason alone.

---

[2] See for example:

Globe Linings, Inc. v. *City of Corwallis*, 434 U.S. 1051 (1977);
Clarke Equipment Co. v. *Keller*, 439 U.S. 825 (1978);
Marco Dental Products, Inc. v. *Austin*, 435 U.S. 918 (1978);
Lahman Manufacturing Co., Inc. v. *Farmband, Inc.*, 436 U.S. 913 (1978);
Manufacturers Systems, Inc. v. *ADM Industries, Inc.*, 99 Sup. Ct. 2841 (1979);
Grayhill v. *AMF*, 99 Sup. Ct. 2861 (1979).

Rule 23(j) requires that there "shall * * * be appended a copy of * * * any order on rehearing". No such order is appended to the petition in this case, although an order on rehearing was entered by the Court below. (See Petition, p. 2).

CONCLUSION

The decision of the Court of Appeals presents no issue which merits the attention of this Court. The petition for Certiorari should be denied.

Respectfully submitted,

FRITZ L. SCHWEITZER, JR.
MANDEVILLE AND SCHWEITZER
230 Park Avenue
New York, New York 10017
Attorney for Respondent

Of Counsel:

MICHAEL A. CORNMAN
MANDEVILLE AND SCHWEITZER
230 Park Avenue
New York, New York 10017